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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AARON A. WAGNER,

Defendant.

Case No. 2:24mj1042

RESPONSE AND LIMITED OPPOSITION
TO DEFENDANT'S MOTION FOR
DISCOVERY

Judge Dustin B. Pead

The Court should grant the Defendant's motion by entering an order directing the United States to provide the discovery required by Rule 16 of the Federal Rules of Criminal Procedure. The United States also submits it would be appropriate for the Court to issue an oral and written order under Rule 5(f) reminding the government of its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, and the possible consequences of violating such an order, which may include suppression of evidence or dismissal of charges.

The Defendant's motion, however, seeks an order directing disclosures beyond the requirements of the law and rules. For instance, the Utah rules of evidence the Defendant refers to are inapplicable here. The law does not require the open file discovery the Defendant requests. *See, e.g., United States v. Wright*, 43 F. 3d 491, 496 (10th Cir. 1994) (government is not required

to give the defendants open file discovery of all evidence in the government's possession). Impeachment materials need not be disclosed "forthwith." *See, e.g., United States v. Ruiz*, 536 U.S. 622 (2002) (no right to *Giglio* material disclosures before a guilty plea); 18 U.S.C. § 3500 (government may not be required to provide a witness's prior statements before they have testified on direct). Nor is the government required to provide materials to impeach individuals it does not intend to call as witnesses, unless the government is relying upon their hearsay statements.

Despite these limited objections, the United States does not object to an order granting the motion by directing disclosure under Rule 16, *Brady* (exculpatory evidence), *Giglio* (impeachment evidence), and *Jencks* (prior statements). The United States anticipates not only complying, but also exceeding the scope of required disclosure, and doing so earlier than the law and rules require. Given, however, the retaliatory actions already taken against witnesses, and concerns other witnesses have expressed about retaliation, the United States requires the discretion the law affords in determining the timing, manner, and scope of some of those disclosures.

DATED November 5, 2024.

Respectfully submitted,

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United States Attorney

/s/Carl D. LeSueur
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